

compositional limitations overlap and include identical elements as recited herein having identical physical characteristics. Manipulation of the compositional limitations are within the skill of the artisan.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

RESPONSE

Applicant has submitted a Terminal Disclaimer to the instant application in co-pending U.S. Patent Application Serial No. 10/518,882. Accordingly, Applicant respectfully believes no Terminal Disclaimer is required in the instant application to U.S. Patent Application Serial No. 10/518,882, since the cited co-pending U.S. Patent Application is the later-filed application.

In particular, MPEP §804 (I)(B)(1) states,

If 'provisional' ODP rejections in two applications are the only rejections remaining in those applications, the examiner should withdraw the ODP rejection in the earlier filed application thereby permitting that application to issue without need of a terminal disclaimer. A terminal disclaimer must be required in the later-filed application before the ODP rejection can be withdrawn and the application permitted to issue.

In light of the above, Applicant respectfully requests the Examiner to withdraw the current rejection.

2. Double Patenting Rejection

The Office Action states,

Claims 1-9 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-9 of copending Application No.

10/499,182 (US 2006/0047071). Although the conflicting claims are not identical, they are not patentably distinct from each other because the compositions are identically claimed. Claims 1, 6 and 9 recite melt flow rates, intrinsic viscosity values and monomer ratios that would be embraced by the reference compositions, as shown by the reference claims 2-5.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

RESPONSE

Applicant respectfully traverses the rejection of claims 1-9.

Since the analysis employed in an obviousness-type double patenting determination parallels the guidelines for a 35 U.S.C. §103(a) rejection, the factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. §103 are employed when making an obvious-type double patenting analysis. These factual inquiries are summarized as follows:

- (A) Determine the scope and content of a patent claim relative to a claim in the application at issue;
- (B) Determine the differences between the scope and content of the patent claim as determined in (A) and the claim in the application at issue;
- (C) Determine the level of ordinary skill in the pertinent art; and
- (D) Evaluate any objective indicia of nonobviousness.

The conclusion of obviousness-type double patenting is made in light of these factual determinations.

Additionally, any obviousness-type double patenting rejection should make clear:

- (A) The differences between the subject matter defined by the conflicting claims - a claim in the cited document compared to a claim in the application; and
- (B) The reasons *why* a person of ordinary skill in the art would conclude that the subject matter defined in the claim at issue is anticipated by, or would have been an obvious variation of, the subject matter defined in a claim in the cited document.

Moreover, when considering whether the subject matter defined in a claim of an application would have been an obvious variation of the subject matter defined in the claim of a patent, or another patent application, the disclosure of the patent or other patent application may not be used as prior art. *General Foods Corp. v. Studiengesellschaft Kohle mbH*, 972 F.2d 1272, 1279, 23 USPQ2d 1839, 1846 (Fed. Cir. 1992), (Emphasis added).

With respect to the current rejection, currently pending claims 1-5 are directed towards polyolefin compositions; claims 6-8 are directed towards a process; and claim 9 is directed towards injection moulded articles. All currently pending claims (i.e., claims 1-9) are submitted herewith as ATTACHMENT A.

With respect to U.S. Patent Application Serial No. 10/499,182, currently pending claims 1, 3, and 5 are directed towards polyolefin compositions; and claim 9 is directed towards injection moulded articles. All currently pending claims (i.e., claims 1, 3, 5, and 9) for U.S. Patent Application Serial No. 10/499,182 are attached herewith as ATTACHMENT B.

Currently pending claims 1-5:

Claim 1 of the current application recites,

Polyolefin compositions comprising, in percent by weight:

- 1) 55-90% of a crystalline propylene homopolymer or copolymer containing up to 15% of at least one of ethylene and C₄-C₁₀ α -olefin(s) and having a value of MFR (230 °C, 2.16 kg) of at least 25 g/10 min; and
- 2) 10-45% of a copolymer of ethylene with at least one C₄-C₁₀ α -olefin(s) containing from 10 to 40% of said C₄-C₁₀ α -olefin(s);

said compositions having MFR values of at least 20 g/10 min, a total content of ethylene of at least 20%, a total content of C₄-C₁₀ α -olefin(s) of at least 4.5%, a ratio of the total content of ethylene to the total content of C₄-C₁₀ α -olefin(s) of at least 2.3, a total fraction soluble in xylene at room temperature of less than 18 wt% and an intrinsic viscosity value of the fraction soluble in xylene at room temperature of at most 1.7 dl/g.

Currently pending claim 1 of U.S. Patent Application Serial No. 10/499,182 recites,

Polyolefin compositions comprising, in percent by weight based on a total weight of the polyolefin compositions:

- 1) 55%-90% of a crystalline propylene homopolymer or copolymer containing up to 15% of ethylene and/or C₄-C₁₀ α -olefin(s); and

2) 10%-45% of a blend of a copolymer of propylene with more than 15% up to 40% of ethylene (copolymer (a)), and a copolymer of ethylene with 10% to 40% of one or more C₄-C₁₀ α -olefin(s) (copolymer (b)), wherein the weight ratio (a)/(b) is from 1/4 to 4/1,

wherein the polyolefin compositions comprise melt flow rate values (230°C, 2.16Kg) equal to or higher than 4 g/10 min, and a content of polymer soluble in xylene at room temperature of less than 25%.

First and foremost, Applicant respectfully traverses the Examiner's assertion on page 3, lines 6-8, of the current Office Action which states,

Although the conflicting claims are not identical, they are not patentably distinct from each other because the compositions are identically claimed.

In particular, Applicant respectfully believes the current application claims, in part, polyolefin compositions comprising:

55-90% of component 1), which is a crystalline propylene homopolymer or copolymer, with the copolymer comprising up to 15% of at least one of ethylene and C₄-C₁₀ α -olefin(s), and component 1) comprising a MFR value of at least 25 g/10 min;

10-45% of component 2), which is a copolymer of ethylene comprising from 10 to 40% of at least one C₄-C₁₀ α -olefin(s);

wherein the polyolefin compositions comprise:

- (i) MFR (230 °C, 2.16 kg) values of at least 20 g/10 min;
- (ii) a total content of ethylene of at least 20%;
- (iii) a total content of C₄-C₁₀ α -olefin(s) of at least 4.5%;

- (iv) a ratio of the total content of ethylene to the total content of C₄-C₁₀ α -olefin(s) of at least 2.3;
- (v) a total fraction soluble in xylene at room temperature of less than 18 wt%; and
- (vi) an intrinsic viscosity value of a fraction soluble in xylene at room temperature of at most 1.7 dl/g.

However, U.S. Patent Application Serial No. 10/499,182 currently claims polyolefin compositions comprising a different component 1), a different component 2), and different final properties.

In particular, component 1) of U.S. Patent Application Serial No. 10/499,182, does not recite a MFR value; component 2) comprises two sub-components (i.e., copolymer (a) and copolymer (b) in a weight ratio of 1/4 to 4/1), whereas component 2) in the current application comprises a copolymer of ethylene; and the final polyolefin composition comprises different final properties. Accordingly, Applicant respectfully believes the compositions are not "identically claimed" as purported by the Examiner.

Additionally, Applicant traverses the current rejection given the Examiner has not made clear: (A) the differences between the subject matter defined by the conflicting claims; and (B) why a person of ordinary skill in the art would conclude that the subject matter defined in the currently rejected claims are anticipated by, or would have been an obvious variation of, the subject matter defined in a claim in the cited U.S. Patent Application. However,

this is the Examiner's initial burden in satisfying a *prima facie* case of non-statutory, obviousness-type double patenting. See MPEP §804 (1). As such, notwithstanding the above, Applicant respectfully believes for this reason alone the rejection should be withdrawn.

With respect to claims 2-5, each of the aforementioned claims depends directly or indirectly from currently pending claim 1, and necessarily includes all of the limitations therein.

As such, Applicant respectfully believes claims 1-5 are patentably distinct from claims 1, 3, 5, and 9 in U.S. Patent Application Serial No. 10/499,182.

Currently pending claims 6-8:

Claim 6 of the current application recites,

A process for producing polyolefin compositions comprising, in percent by weight:

- 1) 55-90% of a crystalline propylene homopolymer or copolymer containing up to 15% of at least one of ethylene and C₄-C₁₀ α -olefin(s) and having a value of MFR (230 °C, 2.16 kg) of at least 25 g/10 min; and
- 2) 10-45% of a copolymer of ethylene with at least one C₄-C₁₀ α -olefin(s) containing from 10 to 40% of said C₄-C₁₀ α -olefin(s);

said compositions having MFR values of at least 20 g/10 min, a total content of ethylene of at least 20%, a total content of C₄-C₁₀ α -olefin(s) of at least 4.5%, a ratio of the total content of ethylene to the total content of C₄-C₁₀ α -olefin(s) of at least 2.3, a total fraction soluble in xylene at room temperature of less than 18 wt% and an intrinsic viscosity value of the fraction soluble in xylene at room temperature of at most 1.7 dl/g,

carried out in at least two sequential steps, wherein in at least one polymerization step the relevant monomer(s) are polymerized to form component 1) and in the other step the relevant monomers are polymerized to form component 2), operating in each step, except the first step, in the presence of the polymer formed and a polymerization catalyst used in the preceding step.

Applicant respectfully believes none of claims 1, 3, 5, and 9 in U.S. Patent Application Serial No. 10/499,182 recite the same, or an obvious variant, of currently pending claim 6. In fact, at the time of this response, U.S. Patent Application Serial No. 10/499,182 does not recite any process claims.

Notwithstanding this fact, Applicant respectfully traverses the current rejection given the Examiner has not made clear: (A) the differences between the subject matter defined by the conflicting claims; and (B) *why* a person of ordinary skill in the art would conclude that the subject matter defined in the currently rejected claims are anticipated by, or would have been an obvious variation of, the subject matter defined in a claim in the cited U.S. Patent Application. However, this is the Examiner's initial burden in satisfying a *prima facie* case of non-statutory, obviousness-type double patenting. See MPEP §804 (1). As such, notwithstanding the above, Applicant respectfully believes for this reason alone the rejection should be withdrawn.

With respect to claims 7-8, each of the aforementioned claims depends directly or indirectly from currently pending claim 6, and necessarily includes all of the limitations therein.

As such, Applicant respectfully believes claims 6-8 are patentably distinct from claims 1, 3, 5, and 9 in U.S. Patent Application Serial No. 10/499,182.

Currently pending claim 9:

Claim 9 of the current application recites,

Injection moulded articles comprising polyolefin compositions comprising, in percent by weight:

1) 55-90% of a crystalline propylene homopolymer or copolymer containing up to 15% of at least one of ethylene and C₄-C₁₀ α -olefin(s) and having a value of MFR (230 °C, 2.16 kg) of at least 25 g/10 min; and

2) 10-45% of a copolymer of ethylene with at least one C₄-C₁₀ α -olefin(s) containing from 10 to 40% of said C₄-C₁₀ α -olefin(s);

said compositions having MFR values of at least 20 g/10 min, a total content of ethylene of at least 20%, a total content of C₄-C₁₀ α -olefin(s) of at least 4.5%, a ratio of the total content of ethylene to the total content of C₄-C₁₀ α -olefin(s) of at least 2.3, a total fraction soluble in xylene at room temperature of less than 18 wt% and an intrinsic viscosity value of the fraction soluble in xylene at room temperature of at most 1.7 dl/g.

As with claim 1, Applicant respectfully traverses the Examiner's assertion on page 3, lines 6-8, of the current Office Action which states,

Although the conflicting claims are not identical, they are not patentably distinct from each other because the compositions are identically claimed.

In particular, Applicant respectfully believes claim 9 of the instant application recites, in part, injection moulded articles comprising polyolefin compositions comprising:

55-90% of component 1), which is a crystalline propylene homopolymer or copolymer, with the copolymer comprising up to 15% of at least one of ethylene and C₄-C₁₀ α -olefin(s), and component 1) comprising a MFR value of at least 25 g/10 min;

10-45% of component 2), which is a copolymer of ethylene comprising from 10 to 40% of at least one C₄-C₁₀ α -olefin(s);

wherein the polyolefin compositions comprise:

- (i) MFR (230 °C, 2.16 kg) values of at least 20 g/10 min;
- (ii) a total content of ethylene of at least 20%;
- (iii) a total content of C₄-C₁₀ α -olefin(s) of at least 4.5%;
- (iv) a ratio of the total content of ethylene to the total content of C₄-C₁₀ α -olefin(s) of at least 2.3;
- (v) a total fraction soluble in xylene at room temperature of less than 18 wt%; and
- (vi) an intrinsic viscosity value of a fraction soluble in xylene at room temperature of at most 1.7 dl/g.

However, claim 9 of U.S. Patent Application Serial No. 10/499,182 currently claims injection moulded articles comprising polyolefin compositions comprising a different component 1), a different component 2), and different final properties.

In particular, component 1) of claim 9 of U.S. Patent Application Serial No. 10/499,182, does not recite a MFR value;

component 2) comprises two sub-components (i.e., copolymer (a) and copolymer (b) in a weight ratio of 1/4 to 4/1), whereas component 2) in claim 9 of the current application comprises a copolymer of ethylene; and the final polyolefin composition of the injection moulded article comprises different final properties. Accordingly, Applicant respectfully believes neither the compositions, nor the injection moulded articles, are "identically claimed" as purported by the Examiner.

Additionally, as with claim 1, Applicant traverses the current rejection given the Examiner has not made clear: (A) the differences between the subject matter defined by the conflicting claims; and (B) *why* a person of ordinary skill in the art would conclude that the subject matter defined in the currently rejected claims are anticipated by, or would have been an obvious variation of, the subject matter defined in a claim in the cited U.S. Patent Application. However, this is the Examiner's initial burden in satisfying a *prima facie* case of non-statutory, obviousness-type double patenting. See MPEP §804 (1). As such, notwithstanding the above, Applicant respectfully believes for this reason alone the rejection should be withdrawn.

As such, Applicant respectfully believes claim 9 is patentably distinct from claims 1, 3, 5, and 9 in U.S. Patent Application Serial No. 10/499,182.

INFORMATION DISCLOSURE STATEMENT

Along with the Office Action mailed October 18, 2007, the Examiner returned a marked-up PTO 1449 form from an earlier filed Information Disclosure Statement. On this form, the Examiner marked through reference "EM", indicating that this reference was missing.

Although Applicants previously provided a copy of this reference, a Supplemental Information Disclosure Statement is provided herewith, along with a copy of the reference. Applicants respectfully request that the listed reference be considered by the Examiner and made of record herein.

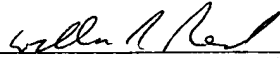
CONCLUSION

Based upon the above remarks, the presently claimed subject matter is believed to be novel and patentably distinguishable over the prior art of record. The Examiner is therefore respectfully requested to reconsider and withdraw all the rejections, and allow all pending claims 1-9. Favorable action with an early allowance of the claims pending in this application is earnestly solicited.

Serial No. 10/518,692

The Examiner is welcomed to telephone the undersigned practitioner with any questions or comments if it is believed such contact will expedite prosecution for this application.

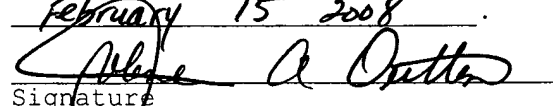
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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop ~~Amendment~~, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on

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February 15 2008

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February 15 2008
Date



ATTACHMENT A

1. (previously presented) Polyolefin compositions comprising, in percent by weight based on a total weight of the polyolefin compositions:

- 1) 55-90% of a crystalline propylene homopolymer or copolymer containing up to 15% of at least one of ethylene and C₄-C₁₀ α -olefin(s) and having a value of MFR (230 °C, 2.16 kg) of at least 25 g/10 min; and

- 2) 10-45% of a copolymer of ethylene with at least one C₄-C₁₀ α -olefin(s) containing from 10 to 40% of said C₄-C₁₀ α -olefin(s);

said compositions having MFR values of at least 20 g/10 min, a total content of ethylene of at least 20%, a total content of C₄-C₁₀ α -olefin(s) of at least 4.5%, a ratio of the total content of ethylene to the total content of C₄-C₁₀ α -olefin(s) of at least 2.3, a total fraction soluble in xylene at room temperature of less than 18 wt% and an intrinsic viscosity value of the fraction soluble in xylene at room temperature of at most 1.7 dl/g.

2. (previously presented) The polyolefin compositions of claim 1, having MFR values of at least 25 g/10 min.
3. (original) The polyolefin compositions of claim 1, wherein the intrinsic viscosity of the fraction soluble in xylene at room temperature is in the range from 0.8 to 1.5 dl/g.
4. (previously presented) The polyolefin compositions of claim 1, wherein the total fraction soluble in xylene at room temperature is less than 15%.

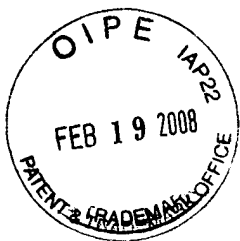
5. (previously presented) The polyolefin compositions of claim 1, having a Ductile/Brittle transition temperature of at most -35°C .
6. (previously presented) A process for producing polyolefin compositions comprising, in percent by weight based on a total weight of the polyolefin compositions:

- 1) 55-90% of a crystalline propylene homopolymer or copolymer containing up to 15% of at least one of ethylene and $\text{C}_4\text{-C}_{10}$ α -olefin(s) and having a value of MFR (230°C , 2.16 kg) of at least 25 g/10 min; and
- 2) 10-45% of a copolymer of ethylene with at least one $\text{C}_4\text{-C}_{10}$ α -olefin(s) containing from 10 to 40% of said $\text{C}_4\text{-C}_{10}$ α -olefin(s);

said compositions having MFR values of at least 20 g/10 min, a total content of ethylene of at least 20%, a total content of $\text{C}_4\text{-C}_{10}$ α -olefin(s) of at least 4.5%, a ratio of the total content of ethylene to the total content of $\text{C}_4\text{-C}_{10}$ α -olefin(s) of at least 2.3, a total fraction soluble in xylene at room temperature of less than 18 wt% and an intrinsic viscosity value of the fraction soluble in xylene at room temperature of at most 1.7 dl/g,

carried out in at least two sequential steps, wherein in at least one polymerization step the relevant monomer(s) are polymerized to form component 1) and in the other step the relevant monomers are polymerized to form component 2), operating in each step, except the first step, in the presence of the polymer formed and a polymerization catalyst used in the preceding step.

7. (original) The process of claim 6, wherein the polymerization catalyst is a stereospecific Ziegler-Natta catalyst comprising, as catalyst-forming components, a solid component comprising a titanium compound having at least one titanium-halogen bond and an electron-donor compound, both supported on a magnesium halide in active form, and an organoaluminum compound.
8. (original) The process of claim 6, wherein both components 1) and 2) are prepared in gas phase.
9. (previously presented) Injection moulded articles comprising polyolefin compositions comprising, in percent by weight based on a total weight of the polyolefin compositions:
 - 1) 55-90% of a crystalline propylene homopolymer or copolymer containing up to 15% of at least one of ethylene and C₄-C₁₀ α -olefin(s) and having a value of MFR (230 °C, 2.16 kg) of at least 25 g/10 min; and
 - 2) 10-45% of a copolymer of ethylene with at least one C₄-C₁₀ α -olefin(s) containing from 10 to 40% of said C₄-C₁₀ α -olefin(s);said compositions having MFR values of at least 20 g/10 min, a total content of ethylene of at least 20%, a total content of C₄-C₁₀ α -olefin(s) of at least 4.5%, a ratio of the total content of ethylene to the total content of C₄-C₁₀ α -olefin(s) of at least 2.3, a total fraction soluble in xylene at room temperature of less than 18 wt% and an intrinsic viscosity value of the fraction soluble in xylene at room temperature of at most 1.7 dl/g.



ATTACHMENT B

1. (Previously presented): Polyolefin compositions comprising, in percent by weight based on a total weight of the polyolefin compositions:

- 1) 55%-90% of a crystalline propylene homopolymer or copolymer containing up to 15% of ethylene and/or C₄-C₁₀ α -olefin(s); and
- 2) 10%-45% of a blend of a copolymer of propylene with more than 15% up to 40% of ethylene (copolymer (a)), and a copolymer of ethylene with 10% to 40% of one or more C₄-C₁₀ α -olefin(s) (copolymer (b)), wherein the weight ratio (a)/(b) is from 1/4 to 4/1,

wherein the polyolefin compositions comprise melt flow rate values (230°C, 2.16Kg) equal to or higher than 4 g/10 min, and a content of polymer soluble in xylene at room temperature of less than 25%.

2. (Cancelled)

3. (Previously presented): The polyolefin compositions of claim 1, wherein the intrinsic viscosity of the fraction soluble in xylene at room temperature is in the range from 0.8 to 2.5 dl/g.

4. (Cancelled)

5. (Original): The polyolefin compositions of claim 1, having a Ductile/Brittle transition temperature equal to or lower than -25 °C.

6. (Cancelled)

7. (Cancelled)

8. (Cancelled)

9. (Previously presented): Injection moulded articles comprising polyolefin compositions which comprise, in percent by weight based on a total weight of the polyolefin compositions:

- 1) 55%-90% of a crystalline propylene homopolymer or copolymer containing up to 15% of ethylene and/or C₄-C₁₀ α -olefin(s); and
- 2) 10%-45% of a blend of a copolymer of propylene with more than 15% up to 40% of ethylene (copolymer (a)), and a copolymer of ethylene with 10% to 40% of one or more C₄-C₁₀ α -olefin(s) (copolymer (b)), wherein the weight ratio (a)/(b) is from 1/4 to 4/1,

wherein the polyolefin compositions comprise melt flow rate values (230°C, 2.16Kg) equal to or higher than 4 g/10 min, and a content of polymer soluble in xylene at room temperature of less than 25%.